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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 73

SAM SWEET, PETITIONER

v.

UNITED STATES OF AMERICA

No. 74

NICHOLAI CHOMIAK, PETITIONER

v.

UNITED STATES OF AMERICA

No. 75

GEORGE CHARNOWOLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals covering all three cases is reported at 211 F. 2d 118. The

District Court opinion in No. 73 is not reported and the opinions in Nos. 74 and 75 are reported at 108 F. Supp. 527 and 109 F. Supp. 810 respectively.

JURISDICTION

The judgment of the Court of Appeals was entered on February 19, 1954 (Sweet App. 22). The petition for a writ of certiorari in each case was filed on May 14, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

In naturalization proceedings resulting in the procuring of their citizenship, petitioner Sweet falsely represented that he had not been a member of the Communist Party within ten years prior to his naturalization petition; petitioner Charnowola falsely represented that he had never been a member at any time, although he had been prior to the ten-year period; petitioner Chomiak did not reveal that he was a member within this ten-year period, although by his own admission he was. The questions presented are:

1. Whether denaturalization judgments under Section 338 (a) of the Nationality Act of 1940 were supported by clear, unequivocal and convincing evidence of fraud in the cases of Sweet and Charnowola.

2. Whether Chomiak's judgment was properly set aside as illegally procured.

STATUTES INVOLVED

The Nationality Act of October 14, 1940, 54 Stat. 1137, provides in pertinent part as follows:

Section 301 (d), 54 Stat. 1140:

A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, and not otherwise.

Section 305 (b) (1) and (d), 54 Stat. 1141:

No person shall hereafter be naturalized as a citizen of the United States—

* * * * *

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or * * *

* * * * *

(d) Who is a member of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (c).

* * * * *

The provisions of this section shall be applicable to any applicant for naturaliza-

tion who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes.

Section 338 (a), 54 Stat. 1158:

It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

* * * * *

STATEMENT

1. *No. 73, Sam Sweet.*—In September 1950, the Government filed an amended complaint pursuant to Section 338 (a) of the Nationality Act of 1940 seeking cancellation of petitioner's naturalization, obtained in February 1946, on the ground that it had been fraudulently and illegally procured. The complaint alleged *inter alia* that on March 28, 1945, when he filed his naturalization petition, petitioner made a false and fraudulent

representation to the naturalization examiner in that he testified under oath that he was not and had never been a member of the Communist Party whereas in fact he had been a member of the Party from 1933 to 1946. It was alleged that petitioner gave the false testimony and concealed the material facts to induce the Service to recommend the granting of the petition (App. 2–8).

At the trial, the examiner who questioned petitioner at the time his petition for naturalization was filed, testified that he had inquired of petitioner whether he was or ever had been a member of the Communist Party, and that petitioner had answered in the negative. Since there were indications in the file that petitioner had been a teacher of communism at a Ford local union, petitioner was asked about this but denied having anything to do with communism (Tr. 36–37).[1]

Witness Fountain, a former Communist Party member, testified that in 1937 he attended with petitioner closed party meetings at which only members of the Communist Party were present (Tr. 46). The witness attended educational classes at which petitioner would lecture on the application of Communist Party theory (Tr. 47).

[1] Petitioner testified that he did not recall being asked by the examiner at the naturalization hearing if he were a member of the Communist Party (Tr. 32–33). At the trial, he stated that "I refuse to answer, under the Fifth Amendment," when asked about his membership in the Communist Party within ten years of the filing of his petition (Tr. 32).

In one lecture, petitioner stated, "This is communist policy worked out by the leaders of our party and this is what we have got to do in the trade union movement" (Tr. 79–80). At a meeting in May 1937, petitioner urged that it was important for those party people active in unions to win the unions over "to the communist point of view" (Tr. 56, 57). In August 1937, at a Milwaukee convention of the U. A. W., petitioner attended closed caucuses at which only Communist party members were allowed (Tr. 46–47, 60, 63–64). In June 1938, at a state convention of the Communist Party, petitioner made an oral report as a commission chairman (Tr. 71–73).

Witness Dearnley was recruited into the Communist Party in the spring of 1940 by petitioner, to whom he gave his signed membership card (Tr. 87–88, 98–99). He related his attendance at several closed party meetings at which petitioner actively entered into the discussions (Tr. 88–90).

Witness Elder, a former Communist Party member, testified that in November 1939 he attended with petitioner a closed Communist Party meeting at Hamtramck, and another such meeting at Jericho Temple a few years later (Tr. 115–116, 120–121, 123–124). At another closed party meeting, petitioner explained the Hitler-Stalin pact "to show the party line" (Tr. 117).

In 1933, witness Nowell, a former Communist Party member, after seeing petitioner's Communist Party membership book and having a

conference with him, appointed him to the party's agitation and propaganda commission and the school commission (Tr. 145–146). This witness estimated that from 1933 to 1936 he attended approximately 100 closed party meetings with petitioner (Tr. 146, 152).

At the conclusion of the testimony, the parties stipulated (Tr. 175–179) that two other witnesses, Charles Baxter and Paul Crouch, if called to the stand, would each testify that he was an active member of the Communist Party from 1927 to about April 1945 and from 1927 through 1942, respectively, and "that on the basis of their membership, training, experience, and activities in the Communist Party of the United States and on the basis of the documents, pamphlets and literature hereinafter mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during the period of their membership, that during the period of their membership the Communist Party of the United States advocated, taught, and advised the overthrow of the government of the United States by force and violence." The documents referred to were Exhibits 4 to 18 (Tr. 177–179).

The District Court in its opinion (App. 17–20) found that petitioner "was for some time during the ten-year period prior to his naturalization a member of the Communist Party of the United

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States"; that the Communist Party during the period in question advocated the overthrow of the United States by force and violence; that there was "no doubt that [petitioner] concealed his history of Party membership from the naturalization authorities and thereby thwarted inquiry into his eligibility for naturalization"; and that the naturalization certificate was fraudulently obtained. Accordingly, an order was entered canceling petitioner's certificate of naturalization (App. 20–21). On appeal, the judgment was affirmed (App. 22).

2. *No. 74, Nicholai Chomiak.*—The Government's complaint, filed on March 7, 1950, alleged *inter alia* that petitioner's naturalization on August 7, 1945, had been procured in violation of Section 305 of the Nationality Act of 1940 in that petitioner was barred from naturalization as a member of a proscribed organization during the ten-year statutory period (App. 3–5).

At the trial, petitioner testified that at the time he was "sworn to citizenship" he was not asked whether he had ever been a member of the Communist Party (App. 42). He stated that he believed in the United States form of government, and that he had never advocated opposition to all organized government or the overthrow of the government of the United States by violence (App. 43–45). He denied concealing any material fact for the purpose of obtaining citizenship (App. 45).

On cross-examination, he admitted that he had been a member of the Communist Party until 1938, but that he had not listed this on his alien registration form executed December 4, 1940, mentioning only the Detroit Cooperative Restaurant and International Workers Order as his organization memberships within the preceding five years (App. 47–48, 51–53). Petitioner refused to answer when, prior to 1938, he had joined the Communist Party, claiming that he could not remember (App. 47–48, 65, 67). He refused to state whether he rejoined the Communist Party after 1938 on the ground that his testimony might incriminate him (App. 48).

There was uncontroverted evidence that petitioner attended between 20 and 30 closed Communist Party meetings from 1933 to 1936 (App. 56–57).

The District Court in its opinion found that petitioner was a member of the Communist Party of the United States from 1933 to 1938; that during these years the Communist Party advocated overthrow of the Government of the United States by force and violence; and that petitioner was therefore prohibited by Section 305 of the Nationality Act from becoming naturalized (App. 14–16). Accordingly, the District Court entered an order canceling petitioner's certificate of naturalization (App. 16–17). On appeal, the judgment was affirmed (App. 69).

3. *No. 75, George Charnowola.*—The Government's complaint, filed on March 14, 1952, to cancel citizenship procured in January 1946, alleged *inter alia* that on March 29, 1945, petitioner filed his petition for citizenship in which he represented under oath that he was not, and had not been for a period of at least ten years prior to the date of his naturalization petition, a member of an organization teaching disbelief in organized government; that on September 16, 1944, petitioner made a sworn statement before a special inspector of the Immigration Service, and on November 19, 1945, testified, under oath, that he had never been a member of the Communist Party; that petitioner's representations were false in that he concealed the fact that he was a member of the Communist Party from 1922 until 1934, and was a member from 1934 until the present time; and that petitioner's false representations were made to induce the Immigration and Naturalization Service to recommend that his petition be granted and thus procure naturalization in violation of law (App. 2–6).

At the trial, it was shown that in a sworn statement given to an Immigration inspector on September 16, 1944, petitioner denied that he had ever been a member of or affiliated with the Communist Party (Ex. 3, App. 16–17; App. 150, 166); and that on November 19, 1945, in answer to a question under oath as to whether he had ever

been a member of the Communist Party, petitioner's reply was, "No, never" (Ex. 4, App. 170, 172). Three former members of the Communist Party testified that they had attended closed Communist Party meetings with petitioner between 1925 and 1932 (App. 29–30, 60, 69–70, 118). Two of these had seen petitioner pay his Communist Party dues, and one had seen his membership book (App. 30, 60, 72). Minutes of a meeting of the Workers Party of America, a name formerly used by the Communist Party, disclosed that petitioner had been recruited into that organization on January 4, 1925 (App. 107, 109, 113–114, 115–116).

When called as a witness for the Government, petitioner stated that the Immigration inspector had asked him if he had ever been a member of the Communist Party, but he refused to say, on the ground that his answer might incriminate him, what reply he had made to that question (App. 21, 23). Petitioner refused to answer another question as to whether he had ever been a member of the Communist Party (App. 25).

The District Court in its opinion found that the testimony of the three former party members was of "solid quality" and "clear, unequivocal and convincing"; that petitioner had been a member of the Communist Party for some time prior to the filing of his petition for naturalization; and that petitioner obtained his citizenship by

fraud by falsely stating under oath before the Immigration authorities that he had never been a Communist, even though the time of his proven Communist membership was more than ten years prior to the filing of his naturalization petition (App. 176–181). Accordingly, the District Court entered an order canceling petitioner's certificate of naturalization (App. 182). On appeal, the Court of Appeals affirmed (App. 183).

ARGUMENT

1. In both the *Sweet* and *Charnowola* cases, Nos. 73 and 75, the judgments of denaturalization rest on findings of fraud—that each of the petitioners knowingly and willfully made false representations with respect to his membership in the Communist Party and thereby thwarted inquiry into his eligibility for naturalization. That such fraud is ground for denaturalization, whether it be denominated intrinsic or extrinsic, and that the decree of naturalization is not *res judicata* on the issue of fraud, is established. *Knauer* v. *United States,* 328 U. S. 654, 671–673; *United States* v. *Ness,* 245 U. S. 319, 325; *United States* v. *Siegel,* 152 F. 2d 614 (C. A. 2), certiorari denied, 328 U. S. 868. As to these cases, the issues raised in the *Sweet* petition and incorporated by reference in *Charnowola's* petition, No. 75, as to the nature of the Communist Party and petitioners' knowledge of its character (Pet. 15–18), are immaterial. The question involved

is not the validity of a certificate issued on the basis of known facts as to Party membership. The significant point is that the naturalization court was prevented from making an adjudication on the true facts because of petitioners' knowing and willful fraud.

a. Petitioner Sweet argues that the evidence of fraud was not "clear, unequivocal and convincing" within the rule of *Schneiderman* v. *United States,* 320 U. S. 110, 154, because it was based on the "uncorroborated recollections of four witnesses" concerning separate events (Pet. 17). Since the stringent rules applicable to perjury cases require no more than two witnesses, the lack of merit in the argument is evident. The district court findings were supported by clear, convincing, and substantial evidence, and were properly affirmed by the court below. See Rule 52, F. R. Civ. P.; *United States* v. *Yellow Cab Co.,* 338 U. S. 338, 341–342; *United States* v. *Oregon Medical Society,* 343 U. S. 326, 331–332.

b. In No. 75, the *Charnowola* case, it is contended that since the proof of petitioner's Communist Party membership antedated the ten-year period under Section 305, his denial of Communist Party membership at any time was at most an immaterial misstatement which could not operate to authorize his denaturalization (Pet. 15–16). However, the making of a relevant false or fraudulent statement is of itself sufficient grounds for canceling citizenship, and it is im-

material that the false statements concerned events which occurred outside the statutory period. Cf. *Johannessen* v. *United States,* 225 U. S. 227; *Stevens* v. *United States,* 190 F. 2d 880, 881 (C. A. 7); *United States* v. *Accardo,* 113 F. Supp. 783 (D. N. J.), affirmed, 208 F. 2d 632 (C. A. 3), certiorari denied, 347 U. S. 952; *In re Zycholc,* 43 F. 2d 438 (E. D. Mich.); *United States* v. *Mancini,* 29 F. Supp. 44 (M. D. Pa.).

The Government was not confined to questioning Charnowola about his Communist Party membership only during the ten-year statutory period. If during the naturalization proceedings, Charnowola had truthfully admitted his Communist Party membership before the ten-year statutory period, the Government would have had the opportunity to investigate further to determine whether he was still a member during the statutory period and whether he was a person attached to the principles of the Constitution. By his false answers, Charnowola thwarted further investigation and thus procured naturalization by a fraud upon the Government and the court.

The asserted conflict between the *Charnowola* case and *United States* v. *Waskowski,* 158 F. 2d 962 (C. A. 7) does not exist. In *Waskowski* the alien did not lie about his membership in a proscribed group; and the court, knowing all the facts, had an opportunity to pass upon his qualifications for citizenship. Petitioner Charnowola,

on the other hand, testified falsely to conceal information as to his previous membership.

2. The *Chomiak* petition, No. 74 involves different considerations since in his case the judgment of denaturalization rests, not on fraud, but on illegality.[2] On the basis of the evidence, including his own admission that he had actually been a member of the Communist Party in 1938, the Court found that the petitioner had been a member of the Communist Party from 1933 to 1938 and therefore had not in fact been eligible for naturalization under the Nationality Act of 1940 when the certificate of naturalization was issued to him in 1945. It therefore revoked his citizenship as illegally procured.

The evidence is clear and convincing that petitioner had not in fact met the statutory requirements for naturalization in 1945 in that, within ten years of the filing of his petition for naturalization, he had been a member of a party advocating the overthrow of the government by force and violence. Petitioner's challenge to the sufficiency of the evidence to support the finding that in the period in question the Communist

[2] Illegality is no longer a ground for denaturalization under the Immigration and Nationality Act of 1952, Section 340 of which (8 U. S. C. 1451) makes "concealment of material fact" and "willful misrepresentation" grounds for revocation of naturalization. It is as yet undetermined, however, whether as to persons naturalized before the 1952 Act went into effect, the liability to have naturalization revoked on the grounds of illegality survives under the savings clause embodied in Section 405 (a) of the Act.

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Party did advocate the overthrow of the government by force and violence, manifestly presents no problem for review. The sufficiency of similar findings on similar evidence has been too often upheld to require consideration at this time. See *In re Saderquist,* 11 F. Supp. 525 (D. Me.), affirmed, 83 F. 2d 890 (C. A. 9); *United States ex rel Harisiades* v. *Shaughnessy,* 187 F. 2d 137 (C. A. 2), affirmed, 342 U. S. 580, both relating to the 1930's. Petitioner's reliance on *Schneiderman* v. *United States, supra,* is misplaced. In that case, where naturalization had occurred in 1927, long before the enactment of the portion of the 1940 Act here involved, the issue was the applicant's personal attachment to the principles of the Constitution, thus placing in issue the applicant's understanding of Communist doctrine. In that context, this Court held that the evidence in the record as to the Communist Party's advocacy of the use of force and violence was not sufficient to meet the required proof for denaturalization, but the Court specifically refused to determine the issue of the Party's advocacy of force. 320 U. S. at p. 158. Under the 1940 Act, the knowledge of the objectives of the Communist Party on the part of a person voluntarily joining the Party is no more in issue for naturalization purposes than it is for the purposes of deportation. *Harisiades* v. *Shaughnessy,* 342 U. S. 580; *Galvan* v. *Press,* 347 U. S. 522.

When Congress passed the Nationality Act of 1940, it intended that it should apply to members of the Communist Party (see Hearings before Committee on Immigration and Naturalization, House of Representatives, 76th Congress, on H. R. 6127, superseded by H. R. 9980, to revise and codify the Nationality Laws of the United States, pp. 327–331). Section 305 does not include the word "knowledge" or "knowingly" and the record of the Congressional hearings, *supra,* p. 394, indicates that the inclusion of that word was considered but discarded, thus showing the purpose of Congress that membership in or affiliation with a proscribed organization would alone preclude naturalization, without proof that the alien personally believed in its aims and objectives. There can be no question of the constitutional power of Congress thus to withhold the privilege of naturalization from alien Communist Party members.

Since, therefore, in 1945 petitioner was not a member of the class which Congress had declared to be eligible for naturalization, the district court was required to cancel the certificate as illegally procured. *United States* v. *Ness,* 245 U. S. 319; *Maney* v. *United States,* 278 U. S. 17. The departure from the statutory requirements fixed by Congress was in this naturalization proceeding at least as serious as the failure to file a certificate of arrival involved in the *Ness* case, or the

failure to hold a hearing in open court involved in *United States* v. *Ginsberg,* 243 U. S. 472, or the racial ineligibility involved in *United States* v. *Thind,* 261 U. S. 204.

Moreover, it should be noted that in the *Ness* case this Court held that a certificate of naturalization could be set aside as illegally entered, even though the Government had entered an appearance and raised the very objection later presented as grounds for denaturalization, whereas, in the instant cause, the grounds for denaturalization had never been passed upon by the naturalization court. The *res judicata* argument raised by petitioners in all three cases, both as to fraud and illegality, is refuted by the cases cited above.

CONCLUSION

These cases were decided under established legal principles, and present no questions calling for further review by this Court. It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

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OCTOBER TERM 1953

No. [redacted] 73

SAM SWEET,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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